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International Covenant on Civil and Political Rights

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Human Rights Committee
123rd session

Summary record of the 3496th meeting
Held at the Palais Wilson, Geneva, on Thursday, 5 July 2018, at 3 p.m.

Chair: Mr. Shany

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The meeting was called to order at 3.05 p.m.

Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedure

Situation in the Gambia considered in the absence of a report (CCPR/C/GMB/Q/2 and CCPR/C/GMB/Q/2/Add.1)

1. *At the invitation of the Chair, the delegation of the Gambia took places at the Committee table.*

2. **Mr. Marenah** (Gambia) said that, in support of the country's transition from an extended period of autocratic rule to democracy, the Government had begun a series of major reforms to realign the architecture of the State with the human rights aspirations of the nation. The primary reform would be to the constitutional order, to which end a Constitutional Review Commission had been set up and tasked with drafting a new constitution based on human rights and the rule of law.

3. Institutional reform was also under way. The Government had inaugurated a Truth, Reconciliation and Reparations Commission to establish the facts of the human rights abuses of the previous two and a half decades. In parallel, the first National Human Rights Commission in the history of the Gambia had been established and the appointment of its members was under way. The Commission would be autonomous and fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

4. Two further areas subject to major reform were the criminal justice system and the security sector. The State party planned to bring its criminal law in line with international standards and had begun the process of entrenching a robust, independent judicial system. In tandem, the mindset and standard operational procedures of the national security forces were being brought back into line with international best practices.

5. Lastly, in a push to renew the State party's international human rights commitments, the National Assembly had begun the processes of acceding to and ratifying several international treaties, including the Convention on Enforced Disappearance and the Convention against Torture. Cognizant of the renewed reporting obligations that such commitments entailed, the Government had set up a permanent Inter-Ministerial National Taskforce on treaty reporting, through which the Gambia would report on its progress towards meeting its human rights obligations and the challenges it faced in its endeavours.

6. **Mr. Heyns** said that he wished to know whether the language of the Covenant would be incorporated into the bill of rights of the new constitution. Moreover, the Government might wish to address the references to the death penalty in the existing Constitution, in view of the current moratorium on that penalty and its signature of the Second Optional Protocol to the Covenant. The delegation should also clarify the status of the Covenant and international law in the domestic legal order. The status of the State party's ratification of the Second Optional Protocol to the Covenant should be clarified, and he would welcome an explanation as to why the Committee had received so few communications under the First Optional Protocol.

7. It would be useful to know whether the State party planned to prosecute the 11 former members of the defunct paramilitary group the "Junglers" that it was holding in custody. He would also be grateful for information on the potential prosecution of the former director of Mile Two Prison, David Colley. In addition, he would be grateful if the State party could clarify how it planned to make sure that the former president, Yahya Jammeh, was held accountable for his actions. He was also interested to know whether former members of the National Intelligence Agency, including its former director, would be prosecuted and whether the State party would introduce a vetting process for all new officers of its security forces.

8. The Committee would welcome an update on the investigation into the killing of 50 foreign nationals by the security forces in 2009. Furthermore, it would be useful if the State party could clarify whether it planned to conduct forensic investigations into recently discovered mass burial sites and whether the results of any investigations would be

submitted to the Truth, Reconciliation and Reparations Commission. He also wished to know whether anything had been done to improve prison conditions since the onset of the transition. In addition, he would appreciate confirmation that no one had been prosecuted under the State party's law prohibiting same-sex relationships and wished to know whether the Government planned to change that law.

9. Further information on the State party's position regarding the conflicting rulings of the Court of Justice of the Economic Community of West African States (ECOWAS) and the Supreme Court of the Gambia regarding its legal provisions on "false news" would be welcome. The Committee would also find it useful if the State party could explain why it had paid only half the indemnity it was ordered to pay to the families of Ebrima Manneh and Deyda Hydara by the Court of Justice of ECOWAS and clarify whether it had paid the full amount of the indemnity it owed Musa Saidykhan. Moreover, he wished to know whether an investigation was under way into the facts of Mr. Hydara's case. Additional details regarding the courts' backlog in criminal cases would be appreciated, including clarification as to whether the alternative dispute resolution mechanism mentioned in paragraph 23 of the State party's replies to the list of issues (CCPR/C/GMB/Q/2/Add.1) would be used in both criminal and civil cases.

10. Lastly, the Committee would be grateful for further information on the National Human Rights Commission, specifically regarding its secretariat, mandate, budget and the appointment of its commissioners. It would also be useful to know whether the new Inter-Ministerial National Taskforce was a standing body.

11. **Mr. Ben Achour** said that he wished to know what the exact mandate and functions of the Truth, Reconciliation and Reparations Commission were, how commissioners would be appointed and what resources would be allocated to it. It would also be useful to learn about the relationship between the Commission and the courts, with particular regard to the prosecution of perpetrators of human rights abuses. He would appreciate further details of the State party's plans to prosecute the perpetrators of human rights violations, including the murder of Ebrima Solo Sandeng in 2017.

12. It was unclear from the State party's definition of terrorism what differentiated terrorist crimes from crimes of ordinary law. Perhaps the distinction could be clarified if the definition were amended along the lines of the definition of terrorism contained in article 28 (g) of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, in which terrorist acts were defined by their intention.

13. **Mr. Politi** said that the Committee on the Elimination of All Forms of Discrimination against Women, in its concluding observations on the Gambia adopted in 2015 (CEDAW/C/GMB/CO/4-5), had denounced the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women in the family and society. He asked whether the activities of the National Women's Council had enhanced the status of women in political, social and economic life and had changed patriarchal attitudes and stereotypes regarding the role of women. He also wished to know whether the National Policy for the Advancement of Gambian Women 2010–2020 provided for measures to promote access to justice, equality before the law, protection against violence, the right to health and health-care services, and the rights of rural women. The delegation should provide information on the current ratio of women in the Cabinet and the National Assembly, in top diplomatic positions and among High Court judges, and clarify the statement in paragraph 45 of the State party's replies to the list of issues that "42 out of the total of 22 magistrates" were women. He would welcome information on the representation of women on the boards of directors of major private companies.

14. Additional information concerning the School Improvement Grant and the bursary scheme for girls would be welcome. He wished to know whether the annual increase of 5.5 per cent in the enrolment of girls in lower basic education between 2010 and 2015 was matched by effective attendance, and what were the corresponding statistics for secondary schools. More recent statistics on the enrolment of girls would be appreciated.

15. The Committee had been informed that, under sharia law, women could have access to land only through marriage, could not inherit land from their husbands and inherited a lower proportion of other assets than men. Those discriminatory rules had reportedly been

codified in the Women's Act of 2010. He would be grateful for confirmation of that report and for information about other provisions of the Act that could have a substantial impact on women's status. Had any action been taken to repeal those provisions and to ensure that the principle of equality between men and women enshrined in the Constitution was strictly enforced?

16. According to a survey conducted by the United Nations Children's Fund (UNICEF) in 2010, 8.6 per cent of Gambian girls married before attaining the age of 15 years and 46.5 per cent before the age of 18. Referring to the End Child Marriage campaign launched by the Ministry of Health and Social Welfare in 2016 and to the Children's (Amendment) Act 2016, which criminalized child marriage and defined children as persons under the age of 18, he asked whether the Act was strictly enforced throughout the country. He also wished to know what other measures had been taken to combat the persistent practices of levirate and polygamy. The delegation should provide child marriage statistics for the previous five years, as well as updated statistics regarding ethnic groups that practised polygamy, the proportion of the total population concerned, and the number of prosecutions and convictions for early marriage.

17. **Mr. Koita** asked what results had been achieved by the Missing Persons Task Force and the Truth, Reconciliation and Reparations Commission, which were mandated to investigate human rights violations committed between July 1994 and January 2017, and what constraints restricted their capacity to bring perpetrators to justice within a reasonable period and to compensate victims.

18. While the Government seemed to be committed to ensuring accountability, the police were reportedly still influenced to some extent by the mentality of impunity that had existed during President Jammeh's term of office. For instance, they had dispersed and arrested peaceful demonstrators or activists who had criticized President Barrow. Two demonstrators had been shot dead by the police in Faraba Banta village on 18 June 2018, although the members of the Police Intervention Unit had not been authorized to use live ammunition. He asked whether the Government had fulfilled its promise to conduct an independent investigation into the incident. He also wished to know whether steps had been taken to retrain the police and other law enforcement officials and to raise awareness of their responsibility to respect and protect citizens' rights.

19. According to several sources, including the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/29/37/Add.2), a number of persons had been detained, tortured, disappeared or even executed by the National Intelligence Agency. There had apparently been no prosecutions of law enforcement officials in 2016, primarily because the Indemnity Amendment Act, 2001, permitted the President to prevent prosecutions for acts committed during a state of emergency or an unlawful assembly. The Special Rapporteur had received reports of rampant impunity for extrajudicial executions and unlawful killings of persons deemed to be opponents of or a threat to the regime. He asked whether the Government had investigated the death of 50 foreign nationals, including 44 Ghanaians, who had been intercepted by the security forces on suspicion of planning to overthrow the Government. He also asked whether there had been an investigation into the secret detention in 2009 of over 1,000 residents of the Foni Kansala district as part of a witch-hunting campaign supported by members of the President's personal guard, the Green Boys, the National Intelligence Agency and soldiers.

20. He asked whether the Government planned to amend the provisions of the Constitution that set the threshold for the use of force excessively low. The Special Rapporteur had also recommended that the Government ensure: that all norms and regulations on the use of force by law enforcement officials complied with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; that any use of force by law enforcement officials was proportionate and necessary in view of the threat posed; and that all cases of extrajudicial, summary or arbitrary execution, enforced disappearance, arbitrary detention and torture or ill-treatment were investigated, that the perpetrators were brought to justice, and that full reparation was provided to the victims and their families.

21. The State party should take urgent action to align its legislation with international norms, especially those relating to the use of firearms by law enforcement officials.

22. He welcomed the announcement of a moratorium on the death penalty and plans to amend the Constitution with a view to abolition of that penalty.

23. **Ms. Waterval** said that, despite the enactment in 2013 of both the Domestic Violence Act and the Sexual Offences Act, the State party in its replies to the list of issues had stated that no data had yet been compiled concerning complaints lodged by victims of domestic violence. However, a list had been provided of the number of cases of gender-based violence in recent years. She asked how the list had been complied in the absence of complaints, and what action had been taken against the perpetrators.

24. Furthermore, the State party had noted that the provision for compensation of victims under the Domestic Violence Act had not yet entered into effect and that no temporary restraining orders had been issued. However, the Act provided for protection orders, pursuant to which victims could remain in their place of residence without the perpetrator. She asked whether steps were taken to rehabilitate perpetrators so that they could return to their family, and whether the State provided support for victims who remained at home with their children.

25. She asked at what age girls were exposed to female genital mutilation (FGM). The legislation prohibiting FGM was of great importance but it was also essential to promote awareness-raising campaigns, especially for practitioners, who were in some cases family members.

26. **Mr. Muhumuza** said that he would appreciate data concerning infant and maternal mortality rates for the period between 2013 and 2015. While the number of women who had died as a result of complications during pregnancy and childbearing had declined between 1990 and 2013, a slight increase had been recorded from 2010. The delegation should provide a detailed explanation of the grounds for that increase and a description of the measures being taken to reverse the trend. The Committee would also appreciate information on the extent to which the nature of the legal regime applicable to abortion contributed to the maternal mortality rate.

The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.

27. **Mr. Marenah** (Gambia) said that, given the calibre of the members of the Constitutional Review Commission, he was confident that the rights enshrined in the Covenant would be reflected in the new constitution that the Commission had been mandated to draft. The Government had decided not to amend the current constitution to abolish the death penalty because, as had been noted, the Constitution was shortly to be replaced. The international instruments to which the Gambia was a party were not currently recognized as domestic law without legislation specifically making them part of the domestic legal framework. The members of the Review Commission would decide whether, under the new constitution, the country's ratification of an international instrument automatically gave it the force of law.

28. Members of the paramilitary group known as the Jungulers were set to appear before the Truth, Reconciliation and Reparations Commission. All indications were that they were willing to testify. The Government would decide whether to prosecute them after they had testified. Prosecuting them before they had offered their testimony was likely to cause them to withhold vital information.

29. Prosecuting the exiled former President was not a priority, as the Gambia was going through a difficult transition and bringing him back to a country where he still had some support would be imprudent. A prosecution could be attempted once all the necessary information had been obtained by the Truth, Reconciliation and Reparations Commission. As Committee members perhaps knew, a number of human rights bodies had attempted to persuade third countries — Ghana, for example — to prosecute the former President for the killings of their nationals in the Gambia.

30. Exhumations at burial sites had been conducted in 2017 after the new Government had come to power but, as the country lacked forensic capacity, identification of the

remains had been a slow process. Exhumations had therefore been put on hold. The assistance of international partners had nonetheless made it possible to identify the remains exhumed in 2017.

31. The Supreme Court had upheld the constitutionality of the law prohibiting the spreading of "false news" about the Government or public officials. The aim of the proposed reform of the country's criminal justice system, however, including the Criminal Code and offences related to media practices, was to bring the country's criminal laws into line with international standards. That reform, combined with the work of the Constitutional Review Commission, would, it was hoped, lead to the removal of all laws inimical to freedom of expression from the country's statute books.

32. The Government had undertaken to award the monetary compensation that the Court of Justice of ECOWAS had ordered in a number of cases concerning the Gambia. Because of an ongoing financial crisis, however, only half the amounts awarded had been paid. The outstanding balance would be paid by the end of 2018. Musa Saidykhan, the complainant in one of those cases, had not received the compensation he had been awarded by the Court because, holding out for payment in full, he had rejected the Government's offer of a down payment. Investigations of all the human rights violations that had occurred under the previous regime, including those alleged by the family of the late Deyda Hydara, were to be overseen by the Truth, Reconciliation and Reparations Commission.

33. In a break with traditional practice and as part of efforts to reduce the backlog of cases in the country's courts, every chamber of the country's High Court had been required to hear criminal cases. Alternative dispute resolution was a process available only to civil litigants, not to persons involved in criminal matters, and it was increasingly resorted to, in particular for family matters, disputes over property rights and the like.

34. A number of applications for membership of the National Human Rights Commission, which had been established by the National Human Rights Commission Act of December 2017, had been received. The vetting and interviewing of applicants was scheduled to take place in the coming months. The Commission, which would have powers of investigation, was expected to be operational by the fourth quarter of 2018. In line with the Paris Principles, the Commission would operate with financial independence. Its budget would be set by the National Assembly rather than by the Ministry of Justice or any other ministry.

35. The Inter-ministerial National Task Force that met to prepare the reports that the Gambia submitted to the human rights treaty bodies was a permanent but not fully autonomous body. The members of the Task Force included government officials and representatives of non-governmental organizations. One of its aims was to ensure that the long delays in the submission of the country's reports would become a thing of the past.

36. It was highly unlikely that the provisions of the current Constitution, under which members of the Armed Forces Provisional Ruling Council, the former military junta, enjoyed immunity for a number of crimes, would be replicated in the new constitution. The process of appointing the members of the Truth, Reconciliation and Reparations Commission, on which each of the country's first-level administrative divisions would be represented, had been made as transparent as possible. Commission members not representing their administrative divisions would be appointed by the President in consultation with such institutions as the Gambia Bar Association and the National Women's Council. The Government could not fund the operation of the Commission alone, but it was receiving considerable support from a number of partners, including the United Nations.

37. The Commission, a fact-finding body, would have the power to recommend prosecution of the persons who appeared before it. Once such a recommendation was made, the courts would take over. Channels of communication would be established between the Commission and the justice system, and the evidence obtained by the Commission would be admissible in court.

38. Nine senior members of the country's former intelligence agency had been charged in connection with the murder of Ebrima Solo Sandeng. The trial, which was proceeding apace, was expected to conclude by the end of the year.

39. He would welcome a clarification of the Committee's concerns about the definition of terrorism in section 2 of the Anti-Terrorism Act of 2002. Those concerns, if communicated more clearly, could be addressed as part of the planned reform of the system of criminal justice in the Gambia.

40. It was clearly not true that, as mistakenly stated in paragraph 45 of the State party's replies to the list of issues, 42 of the country's 22 lower-court judges were women; the correct figures were 22 out of 42. Three of the five members of the Court of Appeal, including the President, were women, as was one Supreme Court justice.

41. Gambian women could and often did own land. It was not the case that under sharia law they could acquire land only through marriage. The amendment to the Children's Act 2005 that had made child marriage a crime was in force, but enforcement was a challenge, particularly in a Muslim country where girls had traditionally been deemed marriageable once they reached puberty. Encouraging children to continue their studies through secondary school — which they usually finished at around the age of 18 years — was among the most effective means of combating child marriage.

42. In relation to cases of disappeared persons, the Truth, Reconciliation and Reparations Commission was examining all reports, making enquiries and seeking to ensure that the perpetrators were held criminally responsible for their actions.

43. Enforcing the prohibition of FGM was highly challenging because of the deep cultural roots of the practice. Communities were strongly reluctant to report cases, particularly given that circumcisions were often performed by close relatives, such as grandmothers. In the one case that had found its way to the courts, no family member had been willing to testify and the charges had eventually been dropped. Nevertheless, FGM was almost never practised among the educated population, and in communities where it was still practised, sensitization campaigns carried out by State and non-State actors had led to a decline in its prevalence. The Gambian authorities were therefore confident that further sensitization would be the most effective way to eliminate the practice over time.

44. **Mr. Barry** (Gambia) said that the Government had shared the latest data on maternal and infant mortality processed by the Demographic and Health Survey 2013. As the survey was carried out every five years, the Gambia Bureau of Statistics was currently working with the Ministry of Health and Social Welfare and other stakeholders to compile and verify the data for 2018.

45. The rise in maternal mortality between 2010 and 2013 was most likely attributable to several factors. First, the limited budget allocated by the Government of the time to maternal and reproductive health had made it impossible to curb the number of deaths and had created dependency on donors such as the United Nations Population Fund (UNFPA). Secondly, the fertility rate in the Gambia remained very high, at 177 per 1,000 women of childbearing age. Thirdly, the intermittent supply of medical supplies and biomedical equipment meant that emergency interventions for women were not always possible. According to World Population Prospects, skilled attendance at birth stood at 60 per cent coverage in 2015, which was lower than projected.

46. As the high birth rate complicated efforts to reduce maternal mortality, UNFPA, in collaboration with the Government, had been working to promote the use of contraceptives and birth spacing. In addition, the World Bank had been supporting the Government to create a results-based financing strategy, in order to enable skilled attendants to provide contraceptives to more families. However, progress had been hampered by strong cultural resistance to contraceptives in many rural communities.

47. As abortions were often privately conducted, official statistics on deaths resulting from terminations of pregnancies were not available. However, the Government would consult other stakeholders to see if any data on abortions could be obtained and shared.

48. **Ms. Jaiteh** (Gambia) said that the education sector followed a policy of providing accessible, equitable, inclusive, quality education for sustainable development. The recently introduced School Improvement Grant was calculated on the basis of the enrolment rate of the school and ensured that public basic and secondary education was free of charge. In order to guarantee accountability for school funding, the Government had strengthened the necessary structures for allocation and procurement.

49. A gender equity initiative had been launched in 2001 to provide training to teachers and carry out sensitization campaigns in communities. Textbooks had been revised to conform to a gender-sensitive approach. Gender disparities had been eliminated from the overall enrolment rate at preschool, primary and secondary levels of education. Nevertheless, high rates of absenteeism and dropout among girls in some regions often stemmed from cultural traditions and beliefs. In order to ensure that no one was left behind, the sector ran entry-level programmes for girls who had dropped out of school, with a strong focus on reaching girls in poor regions. With the support of the World Bank, a "second chance" education initiative had been launched, and opportunities were being provided to girls and boys outside the conventional educational system in order to help them acquire lifelong skills.

50. **Mr. Sonko** (Gambia) said that 58 per cent of Gambian registered voters were female. Women accounted for 6 of 48 members of the National Assembly, 8 of 20 judges, 22 of 42 magistrates and 4 of 20 Cabinet members. Six (of 23) ambassadors in diplomatic missions were women. Although the Government had yet to obtain comprehensive data on the number of women on boards of directors in public and private enterprises, efforts to ensure at least 30 per cent female representation were ongoing as part of the process of constitutional reform.

51. **Mr. Dibba** (Gambia) said that the current dialogue between the delegation and the Committee would not have been possible two years earlier. Since then, Gambians had voted for democracy, and yet that long-awaited democracy posed its own challenges.

52. The Faraba Banta incident of June 2018 had been unexpected and was highly regrettable. An independent investigation into the incident would be launched and its findings made public.

53. After emerging from a long dictatorship, the Gambia had radically changed its law enforcement priorities. The responsibility for domestic security had shifted from the army to the police. Following a comprehensive review that had uncovered gross human rights violations, the new Government had decided to reform the entire security sector. A human rights unit had been established under the Ministry of the Interior, and a crime coordination unit had been set up to provide intelligence for dealing with human rights issues. For the first time, a security adviser had been appointed to the Office of the Minister, along with a technical adviser for policy reform. A zero-tolerance attitude to torture, arbitrary arrest and arbitrary detention would henceforth be observed. A Police Council had been established to examine the affairs of the law enforcement agencies, and a sensitization campaign had been launched to improve relations between the general public and the police.

54. There were no more political prisoners in the Gambia, and the overall prison population had been reduced by almost 50 per cent. The standard of the food served had improved significantly. A Prison Council had been established, in addition to a prison committee, which would review conditions of detention and the outdated Prison Act. A site for the construction of a modern prison had been secured, and the designs would be reviewed to ensure that they were in conformity with international standards. Provision was being made for prisoners to acquire technical skills and undergo training while in detention.

55. **Ms. Waterval**, noting that paragraph 68 of the State party's replies to the list of issues mentioned 589 cases of sexual violence between 2013 and 2017, asked how many prosecutions had taken place in relation to those crimes.

56. **Mr. Politi** said that he wished to know whether any provisions that discriminated against women remained in Gambian legislation and, if so, what affirmative action was envisaged to repeal or amend them. While he welcomed the progress made in relation to the enrolment of girls in schools, literacy levels were distinct from enrolment levels. He would

therefore welcome information on what was being done to address illiteracy among girls, particularly those in rural communities.

57. **Mr. Heyns** asked whether the Government had set a time frame for its ratification of the Second Optional Protocol to the Covenant. He would welcome further information on the status of international law under the Constitution, particularly whether the courts were required to take international law into consideration when interpreting national laws. It was unclear whether the Truth, Reconciliation and Reparations Commission would have the power to grant amnesty. Lastly, the Constitution provided an extremely broad basis for the use of force and seemed to grant a licence to kill, provided that the force used was reasonably justifiable. He would appreciate indications from the delegation about how the Government planned to address that core issue.

58. **Ms. Cleveland** asked whether any prosecutions under the prohibition on child marriage had taken place. She wondered whether the Government collected statistics on child marriages and cases of FGM. Furthermore, she would be interested to hear how many people had been reached through the awareness-raising efforts mentioned by the delegation in those two areas. It would be useful to know whether Gambian legislation allowed for legal abortions in exceptional cases, such as rape or incest. Lastly, she asked whether women who presented at Gambian hospitals with complications resulting from unlawful abortions were given medical care, and whether they were prosecuted.

59. **The Chair** said that, in relation to the definition of terrorism provided by the delegation, he would welcome further information on how the provision that alluded to prejudice to public security or national defence was interpreted in practice.

The meeting rose at 6.05 p.m.

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The meeting was called to order at 10.05 a.m.

Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedures (*continued*)

Situation in the Gambia considered in the absence of a report (*continued*)
(CCPR/C/GMB/Q/2; CCPR/C/GMB/Q/2/Add.1)

1. *At the invitation of the Chair, the delegation of the Gambia took places at the Committee table.*

2. **Mr. Marenah** (Gambia), resuming his delegation's replies to the questions raised at the previous meeting, said that disaggregated data on the number of perpetrators of sexual violence, prosecutions and repeat offenders would be provided during the session or subsequently submitted in writing.

3. The only aspect of the Women's Act of 2010 that discriminated against women was the provision governing inheritance: according to sharia law, the share of a deceased's estate for female heirs was only half that for male heirs. It would be difficult to change that rule, but Muslim families wishing to deviate from it were free to do so within the context of their family. If an inheritance dispute was brought before a Cadi court, however, the court would rule on the basis of the relevant provisions of sharia law.

4. The National Assembly had approved ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the instrument of ratification was being prepared for signature by the President and would be deposited with the United Nations shortly thereafter.

5. The Act establishing the Truth and Reconciliation and Reparations Commission provided that the Commission could recommend the granting of amnesty on application by the accused, but it was for the Government to decide whether or not amnesty was granted. The Act also provided that no amnesty must be granted for acts that formed part of a crime against humanity.

6. The definition of acts of terrorism set forth in section 2 of the Anti-Terrorism Act of 2002 was admittedly inadequate. The Committee's concerns in that respect would be taken on board during the planned review of criminal justice legislation, and steps would be taken to bring the definition into line with best practice.

7. **Mr. Barry** (Gambia) said that the abortion rate was particularly high among very young women, including school-aged girls, although there were no reliable statistics. Since abortion was illegal unless the mother's life was at stake, hospitals were only involved if complications arose. Such cases were normally registered as emergency cases, rather than abortions. When a woman sought assistance at a hospital, the staff's first and foremost concern was her health, not her legal situation. Health-care workers were unlikely to report such cases to the police. If the woman died, the police might be notified, but autopsies were not performed as a matter of standard procedure. Moreover, should the woman die from a clandestine abortion at home, the cause of death, or even the death itself, might be kept secret by the family. Given those circumstances, it was not possible to provide statistics on maternal mortality associated with clandestine abortions.

8. **Ms. Jaiteh** (Gambia) said that the introduction of the School Improvement Grant had greatly improved school enrolment rates, especially in rural communities, with levels of 90–100 per cent being achieved. There were no statistics on literacy, but the presumption was that if a child attended four to six years of school, he or she would be literate. A household survey to obtain reliable data on literacy rates was being planned.

9. **Mr. Sonko** (Gambia) said that, in a bid to raise awareness of the harmful effects of female circumcision, a series of advocacy activities had been conducted over the previous five years. Government and non-governmental organizations had met with specific target groups, including women's groups, religious leaders, schoolchildren, health-care workers and the judiciary. The Government had also engaged with law enforcement agencies, including migration officials, to raise awareness of the cross-border dimensions of female genital mutilation (FGM).

10. In order to assess the status of implementation of the National Policy for the Advancement of Gambian Women 2010–2020, a midterm review had been conducted in 2017. The review had revealed challenges to implementation, which were mostly owing to a lack of financial and human resources. Efforts had been made to advance women's empowerment and mainstream gender in sectoral policies and programmes. The biggest achievement to date was the increased legal protection of women and girls through the implementation of the Domestic Violence Act of 2013, the Sexual Offences Act of 2013 and the Women's (Amendment) Act of 2015. Although child marriage was criminalized, there had been no prosecutions. Instead, the Department of Social Welfare took action on cases brought to its attention, seeking to resolve the situation in the best interest of the child.

11. **Mr. Politi** asked whether it was true that, to date, torture was not established as a punishable offence in the Gambian Criminal Code. If so, the delegation should indicate what was being done to remedy the situation while the State party was in the process of acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to information brought to the Committee's attention, torture and ill-treatment of detainees by the security forces was commonplace. What had been done to prevent and punish those persistent acts of torture in detention facilities? More information about the number of prosecutions of officials of the National Intelligence Agency and other law enforcement officials accused of torture in the previous five years would be appreciated. Was it true that the Indemnity (Amendment) Act of 2001 gave the President authority to grant immunity and that perpetrators of torture were therefore rarely prosecuted? He would appreciate clarification of the question of whether the Act was in the process of being repealed. It would be useful to know whether participation in the recently introduced training programmes for preventing torture in places of detention was mandatory for police and prison officials before they assumed their functions.

12. The delegation should provide information on measures aimed at reducing the length of pretrial detention and speeding up trials. In the light of the State party's assertion that all political prisoners had been released since January 2017, details of the number of political prisoners in detention at that time and during the previous five years and the charges against them would be appreciated. Had they been given a fair trial?

13. He asked whether it was true that police officers and other members of the security forces often arbitrarily arrested and detained citizens for longer than the maximum legal period of 72 hours without bringing formal charges. If so, the delegation should indicate what was being done to remedy the situation. Additional information about the bail system would also be appreciated, and in particular about the reportedly frequent denial of bail applications filed by persons charged with minor offences. He wished to know whether the military decrees giving the National Intelligence Agency and the Ministry of the Interior broad powers to detain individuals indefinitely without bringing charges "in the interest of national security" continued to apply.

14. The delegation should describe the measures taken to improve the reportedly inhuman conditions of detention, particularly in the Mile Two State prison, and indicate whether the mass release of political prisoners had helped alleviate the situation. It would be useful to learn about the precise functions of the Prison Visiting Committee and its membership, and about the Office of the Ombudsman's role in overseeing conditions in places of detention. What steps had been taken to ensure the separation of juveniles on remand from adults? Did the State party have any plans to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

15. **Mr. Koita** said that, although the Gambia was a country of origin, transit and destination of trafficking in persons, little seemed to be done to implement the minimum standards for the elimination of trafficking. It was difficult to understand why those crimes were not afforded the same treatment as other serious offences. It was unclear whether that was a matter of a shortage of financial and human resources or a lack of political will, given that the legal infrastructure was in place. The delegation should indicate whether there were plans to increase the financial and human resources allocated for the National Agency against Trafficking in Persons and to investigate and prosecute crimes of human trafficking, including those involving public officials. It would also be useful to learn about measures

taken to train law enforcement officials in implementing anti-trafficking legislation. The Trafficking in Persons Act of 2007, as amended in 2010, the Children's Act of 2005 and the Tourism Offences Act of 2003 all provided for stiff penalties which, if imposed, would certainly act as a deterrent.

16. With regard to forced labour, while acknowledging that the State party had reported that public officials were no longer obliged to work on the farms of the President, he wondered if any arrangements had been made or any fund established to compensate the victims of that practice.

17. **Mr. Muhumuza** said that he was grateful for the information on the treatment of refugees. Given that the State party lacked any transit centres, he wished to know how and where refugees and asylum seekers were actually received and what steps the State party was taking to establish such centres. He asked what percentage of government spending was earmarked for the management of refugees and asylum seekers and how such resources were allocated. If, as the Committee had been led to believe, refugees were treated as part of a community rather than as individuals or families, he would like to know how the State party was supporting those communities.

18. He welcomed the efforts of the State party to overhaul the judiciary. However, he wished to have further details of how judges were appointed under the new system. In particular, he wondered how much autonomy the President had in that process and what checks were in place to ensure that only suitably qualified and properly vetted candidates were selected. Further, he would like to know how the exercise of budgetary autonomy applied to the judiciary and whether the latter's budget was taken directly from the consolidated revenue fund. He would welcome information on the scope of the work to be done by judicial officers from the Commonwealth Secretariat in tackling the backlog of cases and wondered how the process was safeguarded from reflecting the challenges of judges on a contract system. He would be equally grateful to know how the Judicial Ethics Committee was constituted and what systems were in place to ensure its independence and effectiveness. He also wished to have a timeline leading to enactment of the Judges Remuneration Allowances and Other Benefits Bill, given the importance of that piece of legislation for the reform of the legal system.

19. He appreciated the information on access to legal counsel but wished to have further details on the quality of legal aid services provided to suspects. Specifically, he wondered how helpful such services were to persons accused of capital crimes. He would like to know what systems were in place to afford lawyers sufficient protection from harassment and intimidation by law enforcement officers, to hold officers accountable for past violations and to prevent them from exceeding their mandate in their interaction with lawyers.

20. He was pleased to have information on the Cadi courts but wished to know whether an oversight mechanism had been established to monitor their judicial operative framework. If review decisions handed down by the Cadi courts were final, he would like to know what checks and balances were in place to ensure that proceedings were fair and impartial. Similarly, he wished to know what steps had been taken to reform the military courts and what oversight mechanisms had been instituted to ensure that they complied with due process and the requirements of a fair trial.

21. **Mr. Ben Achour** said that the State party's efforts to promote press freedom were commendable. Given the scale of that task following the persecution of journalists and human rights defenders under the former regime, he wished to know how much progress had been made and whether any bills had been tabled with a view to enshrining press freedom in domestic legislation. The Committee was concerned at reports that a woman had been arrested for breach of the peace in February 2017 after allegedly insulting the President and then freed on bail some weeks later. He understood that the magistrates' court had subsequently dismissed the case. He would appreciate hearing the delegation's views on that case. He also wished to know whether any steps had been taken to pay damages to the families of journalists who had suffered human rights abuses under the former regime, in line with the decisions handed down by the Court of Justice of the Economic Community of West African States (ECOWAS).

22. The State party had reported that the Non-Governmental Organisation Act of 1996 was due to be reviewed. However, since that Act set out draconian conditions for the registration of NGOs, he wondered if the State party would consider repealing it. Information on progress in that regard would be appreciated.

23. Lastly, he wished to point out that a certain interpretation of Islam allowed hereditary inequality on the basis of sharia law, but other interpretations or doctrines established gender equality. Certain countries were indeed reviewing their family legislation to ensure gender equality while respecting the tenets of Islam.

24. **Ms. Waterval** said that the Committee was concerned about the reported difficulties in registering some births. She wondered whether the State party planned to deploy mobile registration units in remote regions and to ease restrictions on the registration of children born out of wedlock. While birth registration was free, a penalty was imposed for late registrations. She would be grateful to know how much that penalty was.

25. She understood that the Independent Electoral Commission had played an important role in the recent presidential, parliamentary and local elections and wished to know how the independence and financial autonomy of that body was guaranteed. She would welcome information on the role of the Inter-Party Committee and how it was related to the Commission. Furthermore, she wondered how well the coalition parties had worked together since the election.

26. The Committee had yet to receive an answer to its question about the number of prosecutions and convictions of lesbian, gay, bisexual, transgender and intersex persons. It also urged the State party to decriminalize homosexuality and extend the scope of its equality laws to include non-discrimination on the grounds of sexual orientation and gender identity.

27. **Mr. Heyns** said that some of his questions remained unanswered. He wished to know precisely what was meant in the Constitution and the Criminal Code by reasonable force, which was a rather broad term. He was also concerned that police immunity was provided for under the Indemnity (Amendment) Act of 2001 and wondered whether the State party planned to align provisions on the use of force with international standards. As a follow-up to Ms. Waterval's questions on the protection of minors, he would like to know what steps the Government was taking to tackle the issue of juvenile corporal punishment. In addition, he wished to have further information on the mandatory payment of deposit fees by local election candidates.

28. While noting the Government's efforts to disseminate information on the Covenant, he stressed the need for university-level education on the Optional Protocol to the International Covenant on Civil and Political Rights. He also wished to know whether the State party would consider educating school pupils on human rights and the Covenant, as certain other African States did.

29. **Mr. Santos Pais** said that he wondered whether, in addition to setting up regional high courts, the State party would consider establishing itinerant courts as a means of improving the local delivery of justice. In addition, while welcoming information on the independence of the judiciary, he emphasized the importance of a strong and autonomous public prosecution service. He wished to know whether that service would have a hierarchical or decentralized structure, whether it would have oversight of police conduct, whether its work would be based on the principle of opportunity or legality, whether it would handle only criminal cases or also civil ones, and how many female public prosecutors were currently in office.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

30. **Mr. Marenah** (Gambia) said that the Government had recently ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was shortly due to deposit an instrument of ratification for the Second Optional Protocol to the International Covenant on Civil and Political Rights. It regretted the absence of provisions on torture prevention in its domestic legislation and the consequent failure to appropriately charge and convict past perpetrators, and it was prioritizing the inclusion of such provisions in its reform of the legal system. It was also

consulting regularly with the Committee Against Torture on the training of security personnel and law enforcement officers. Plans were afoot to repeal the Indemnity (Amendment) Act of 2001.

31. An interministerial task force had been established to assess the situation of pretrial detainees. Its findings would inform recommendations to the Chief Justice on the establishment of special courts to expedite the cases of long-term detainees. One of the new President's first executive actions had been to release all political prisoners. The most common political offences for which people had been imprisoned or convicted included treason, abuse of public office and protesting without a permit. The Government's long-term objective was to review and reform legislation to ensure that Gambians were able to exercise their constitutional rights freely. Efforts were being made to ensure that a strong judiciary was in place to prevent convictions for offences that did not align with international standards.

32. Arbitrary arrest had become a thing of the past. Breaches of the law that people could not be detained without charge for over 72 hours had not been eliminated but occurred much less frequently than previously. For example, following two deaths at the protest in Faraba Banta, five paramilitary officers had been taken to court after 72 hours in custody, to ensure that they remained lawfully detained. The Government aimed to improve civic education and raise awareness of rights among the public and law enforcement officers.

33. Over the previous year, prosecutors had been making efforts not to oppose the setting of bail, except in cases of capital offences or repeat offenders considered a danger to society. As a result, there were very few reported objections to bail conditions. Under the guidance of the Chief Justice, magistrates were receiving training to ensure that they set reasonable bail conditions with due regard for human rights.

34. The National Intelligence Agency Decree remained in force, although the Agency had been instructed not to carry out arrests or detentions. The State Intelligence Security Bill was undergoing consultation to ensure that the Agency complied with international standards for intelligence agencies. It was hoped that the Bill would be passed into law in late 2018, after which the Decree would be repealed.

35. The National Agency against Trafficking in Persons had been established in 2007 and had been rated as a Tier 2 agency in the 2018 Trafficking in Persons Report published by the United States Department of State. The Government continuously collaborated with international partners to combat trafficking in persons. The Agency worked to combat cases of trafficking for labour and sex work, notably in the tourist industry, and had conducted raids and made arrests. For example, in June 2018 two Nigerian women had been arrested for their involvement in the attempted trafficking of a child from Nigeria. However, existing trafficking legislation had proved unable to sufficiently address smuggling, which was not directly criminalized and was therefore difficult to police.

36. There were no talibes in the Gambia at present. However, some Gambian parents sent their children to Qur'anic schools in Senegal or Guinea-Bissau, where the children could become involved in begging. It was difficult to monitor and police such movements, as the children were not sent abroad in organized groups and travelled using ordinary routes and modes of transport.

37. Under the previous President, former public officials had been subject to forced labour on the farms in his home village. The practice had ended and the victims were entitled to compensation. Their complaints would be heard by the Truth, Reconciliation and Reparations Commission, which could recommend the payment of compensation.

38. The new Chief Justice had streamlined the process for appointing judges. All potential judges were required to pass a test set by the Gambia Bar Association, which then approved those recommended for appointment. In the previous year, 12 new superior court judges had been appointed, including Gambian lawyers who had returned from working abroad, and the high calibre of personnel ensured that the Court commanded respect. Moreover, the contract judge system had been abolished, since the independence of the judiciary had been negatively affected by contract judges being dependent on the

Government for the renewal of their contracts. However, the removal of those judges had resulted in a capacity shortage in the legal system; temporary judges and technical assistance had therefore been requested from the Commonwealth and other common law countries.

39. An independent Judicial Ethics Committee had been established within the Judicial Service Commission, which was responsible for overall supervision of the judiciary. The Committee's members included at least two members of the Commission, a sitting judge from the Court of Appeal and a member of the Gambia Bar Association. The Committee could receive complaints from the public and from legal practitioners. It had the necessary independence to address allegations of misconduct on the part of judicial officers, although there had been few such complaints in the previous year.

40. Under the new Chief Justice, the judiciary prepared its own budget for direct submission to the National Assembly, rather than to the Ministry of Finance and Economic Affairs. That change would improve the budgetary autonomy of the judiciary and ensure that it was allocated adequate resources.

41. The Judges Remuneration Allowances and Other Benefits Bill would ensure that judicial officers were adequately remunerated and provided for their pensions. It was hoped that the Bill would encourage Gambian legal practitioners working abroad to take up positions within the country. The Bill would likely come before the National Assembly by the end of 2018.

42. Although the integrity of the judicial system had not been guaranteed under the previous Government, the judicial system now enjoyed greater independence and it was hoped that oversight mechanisms would prevent potential miscarriages of justice. The relationship between legal practitioners and law enforcement officers had been restored to one of mutual respect. As a result, there were no longer any incidents of harassment of legal practitioners by law enforcement agents, nor were future incidents predicted. An agency had been established to provide legal services to indigent Gambians. Such assistance, which had previously been restricted to capital offences, had been very effective in guaranteeing legal representation. It was hoped that increased human and financial resources could induce more experienced and qualified lawyers to provide their services.

43. The Cadi court system fell within the mandate of the Office of the Chief Justice and oversight within the system was provided by the Cadi Appeals Panel. Cadi court officers were considered judicial officers and were subject to the decisions of the Judicial Ethics Committee in the event of any misconduct. Military courts were limited to addressing military offences and were subject to adequate oversight procedures. Their decisions were not final, as a convicted person could appeal to the Court of Appeal and then to the Supreme Court.

44. The Ministry of Justice and the Ministry of Information and Communication Infrastructure had collaborated with the non-governmental organization (NGO) Article 19 to review and reform all media laws. They aimed to develop a freedom of information bill that could be approved by the end of 2018 for enactment in 2019. Such a bill would greatly help to ensure access to information among legal practitioners and the general public.

45. Under existing legislation, insulting the President continued to be regarded as sedition, although provisions related to freedom of expression were undergoing review as part of efforts to reform legislation on the media and criminal justice. A woman had been arrested and charged under that legislation in January, although the case had been withdrawn on the advice of the executive, and the Ministry of Justice had advised against prosecution when a man had been taken to court on sedition charges for insulting the President on social media. Such arrests would be stopped and it was hoped that no one would be convicted under those provisions before they were reformed. However, as traditional cultural respect for leaders had declined, citizens must learn to exercise freedom of expression responsibly, rather than baselessly insulting public officials.

46. Regarding the judgments of the ECOWAS Court of Justice, the families of Chief Ebrima Manneh and Deyda Hydara had so far received half of the judgment sum, although

Musa Saidykhan had not accepted payment in instalments. It was hoped that all remaining payments would be made by the end of 2018.

47. The decree on NGOs was under review and a replacement NGO bill had been drafted and sent to the Ministry of the Interior for consultation. The aim of the bill was to reform the requirements for registration and operations of NGOs in the Gambia.

48. The constitutional framework ensured a certain degree of autonomy for the Independent Electoral Commission, which had proved its independence by declaring victory for the opposition coalition following the most recent election. New constitutional provisions should ensure that the Commission was able to operate without interference by eliminating existing legislative provisions allowing the Commission's Chair or members to be removed by the executive without due process or cause. The Commission and the Inter-Party Committee worked together to resolve problems related to permits for meetings held by political parties, conflicts between supporters of different political parties and other issues. The Inter-Party Committee had helped to ensure that the recent parliamentary and local government elections ran smoothly. Those elections had been considered free and fair by international and local observers, including the European Union Election Observation Mission, whose report was available online. For the first time in 20 years, almost all political parties were represented in the parliament, including the former ruling party, which, in the interests of democracy, the Government had refused to ban, despite public pressure to do so. All political parties had access to all State and non-State media outlets. The deposit payable by candidates for local government elections had been drastically reduced, from US$ 1,000 to US$ 50.

49. Although the legal provisions that criminalized homosexuality had not been repealed, the Government had made a commitment not to enforce them and no members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community had been prosecuted or convicted under them. While the Government recognized the right of all persons to freedom of sexual orientation, it was also accountable to the Gambian people, whose attitudes were shaped by a particular social, cultural and religious context; it would not repeal the legislation in question unless the Gambian people were in favour of doing so. The constitutional review process and the reform of the criminal justice system would be an opportunity to gauge public opinion on the matter. The issue of the use of force by law enforcement officers would also be addressed during the constitutional review process.

50. Human rights education was provided at university level but not in schools. The Government would consider reinstating civic education in secondary schools, with a view to improving the dissemination of information on human rights and the Covenant. As part of efforts to decentralize the justice system, travelling magistrates had been appointed to improve access to justice for people living in remote areas; those magistrates were based in regional capitals and travelled to specific districts as required.

51. The status of the Office of the Director of Public Prosecution and its relationship with the Government would be reviewed during the constitutional reform process. The Office did not directly supervise the operations of law enforcement officers or intervene in the investigation of criminal offences. However, its role in that respect was under review and would be the subject of a position paper, since it could be argued that the Office should provide more guidance to police officers during investigations, in order to ensure that the prosecution of a case did not fail as a result of flaws in the investigation. He was proud to report that 69.6 per cent of prosecutors were women; it was hoped that similar progress could be achieved towards gender parity in the National Assembly and the Cabinet.

52. **Mr. Barry** (Gambia) said that a total of 1,824 abortions had been reported in 2017, compared with 2,098 in 2016 and 1,607 in 2015. The number of referrals in complicated cases had totalled 205 in 2017, compared with 307 in 2016 and 253 in 2015.

53. Birth registration was free for all children up to the age of 5 years and cost only US$ 0.25 for children older than 5 years. In cases where a child had been born out of wedlock and the father did not wish to accept responsibility for the child, the father's name was recorded in the civil registration system but omitted from the child's birth certificate. If the father accepted responsibility for the child at a later stage, a new birth certificate indicating the father's name was issued. Community health workers were responsible for

performing outreach work in rural areas and encouraging mothers who had given birth outside health facilities to report the birth at the nearest health facility and to have their child vaccinated and registered. There were around 65 birth registration centres throughout the country. Steps were being taken to establish a single registration system, in which each person would be issued with an identification number that could be used in all identity-related procedures.

54. **Ms. Jaiteh** (Gambia) said that the Government had established a zero-tolerance policy on corporal punishment. That policy had been brought to the attention of teachers and parents and was reflected in minimum standards that had been issued.

55. **Mr. Dibba** (Gambia), noting that many ministers in the current Government had been incarcerated under the previous regime and thus had first-hand experience of the prison system, said that the Government was committed to improving prison conditions and had established two committees to that end. The first was a fully independent prison visiting committee that was responsible for monitoring prisons and investigating reports of torture, violence and poor conditions of detention. The second was a special committee of lawyers that had been tasked with drawing up recommendations on improving prison conditions and reviewing the Prison Act; the report prepared by that committee would be submitted to the Government shortly.

56. The Government was working with the Office of the United Nations High Commissioner for Refugees (UNHCR) to address the challenge of providing housing for refugees, many of whom were reluctant to move from urban areas to less crowded rural areas. Some temporary transit centres for refugees had been set up; however, in many cases, refugees had relatives in the Gambia and preferred to live with them rather than in a temporary transit centre.

57. **The Chair** invited the Committee members to address follow-up questions to the delegation, on the understanding that the State party would respond in writing after the meeting.

58. **Ms. Waterval**, noting that the delegation had reported that no members of the LGBTI community had been prosecuted or convicted, said that she would like to know whether any members of that community had been arrested. She would also appreciate information on the policy regarding birth registration for refugee children. Lastly, she wondered whether the number of years that a refugee must have spent in the Gambia in order to be eligible for Gambian citizenship took into account the number of years that the person had spent as a refugee.

59. **Mr. Heyns** asked whether accurate records of events that had occurred under the previous regime had been kept and would be passed on to the Truth, Reconciliation and Reparations Commission.

60. **Mr. Politi** asked whether the two judicial remedies available to victims of arbitrary arrest and detention under sections 18 (6) and 37 of the Constitution were cumulative or alternative and how many complaints had been submitted under those sections.

61. **Mr. Marenah** (Gambia) said that his Government was grateful for the opportunity to appear before the Committee in the absence of a full report and would take on board the Committee's recommendations. It was committed to the ideals enshrined in the Covenant and would henceforth take its reporting obligations very seriously. The constitutional review process and the criminal justice system reform would be an opportunity to align the Constitution and national legislation with the Covenant and to redefine the position of international law within the national legal order.

62. **The Chair**, recalling that the second periodic report of the Gambia had been due in 1985, said that the Committee was pleased to engage with the State party after such a lengthy delay. It welcomed the State party's commitment to ratifying the second Optional Protocol to the Covenant and the steps taken to establish a new constitutional order, taking into account international human rights standards. The Committee's concerns, which included the need to compensate victims of crimes committed under the previous regime, the conditions in prisons and the regulation of abortion, would be reflected in its concluding observations. The Committee would discuss the extent to which the State party's written

and oral replies constituted a report. In future, the State party should consider opting for the simplified reporting procedure, which helped to alleviate the burden of reporting.

The meeting rose at 1.05 p.m.

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Chair: Ms. Jelić (*Vice-Chair*)

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Ms. Jelić (Vice-Chair) took the Chair

The meeting was called to order at 3.05 p.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (*Right to life*) (*continued*) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited the Committee members to resume their consideration of draft general comment No. 36, beginning with paragraph 16.

2. **Mr. Shany** (Rapporteur for the general comment) drew the members' attention to an informal document containing proposed amendments to paragraphs 16, 18 and 22 based on the Committee's discussion at its previous meeting on the draft general comment.

Paragraph 16

3. **Mr. Shany** said that, at the previous meeting on the draft general comment, Mr. de Frouville had proposed that the first sentence of paragraph 20 should be moved to paragraph 16. The second sentence of paragraph 16 would then be amended to read: "The Covenant does not provide an enumeration of permissible grounds for deprivation of life, but by requiring that deprivations of life must not be arbitrary, article 6 (1) implicitly recognizes that some deprivations of life may be non-arbitrary."

4. *Paragraph 16, as amended, was adopted.*

Paragraph 18

5. **Mr. Shany** said that Mr. Heyns had proposed inserting a new first sentence in paragraph 18 which would read: "Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law." That sentence broadly reflected the first sentence of article 12 of general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life, which was cited in footnote 44.

6. It was further proposed that the words "For example", at the beginning of what was now the third sentence, should be deleted, that the word "potentially" should be inserted before "lethal force" in the same sentence; that the words "must be reasonable and necessary" should be replaced with "must be strictly necessary"; and the words "non-lethal alternatives" should be replaced with "other alternatives". It was also proposed that the words "as far as possible" should be deleted from the phrase "directed, as far as possible, only against the attacker" and that the last phrase should be amended to read "the threat responded to must involve imminent death or serious injury".

7. In addition, in his proposed amended version of paragraph 18, the last sentence would be replaced with the following two sentences, which were based largely on proposals by Mr. Heyns and on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials: "The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. It cannot be used in order to protect private property or prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others."

8. **Mr. Heyns** said that he wished to propose deleting the word "private" before "property" in the last sentence. The last sentence of paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulated that the "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". He proposed referring to the "intentional lethal use of force" in the second-to-last sentence of paragraph 18.

9. **Mr. de Frouville** said that a clear distinction should be drawn between the legal restrictions applicable to the deprivation of life and the requirement that deprivation of life should not be arbitrary. The first three sentences of the paragraph might cause confusion in

that regard, since the first stated that deprivation of life was arbitrary if it was inconsistent with international or domestic law, whereas the third stated just the opposite: that "arbitrariness" should not be equated with "against the law". The relationship between the two concepts was also dealt with in paragraph 17 and in neither case was the distinction made as clearly as it had been in paragraph 12 of general comment No. 35 on article 9 (CCPR/C/GC/35), which was reflected in paragraph 18 of draft general comment No. 36. The French version of paragraph 18 should be aligned with the sentence that appeared in general comment No. 35, since the wording in English was exactly the same.

10. Along the same lines, paragraph 11 of that earlier general comment set forth a more satisfactory interpretation of what constituted an arbitrary action when it stated that "arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacked any legal basis was also arbitrary."

11. In his view, the judgment of the European Court of Human Rights referred to in footnote 46 was not entirely relevant. Paragraph 177 of that judgment cited paragraph 10 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which stated that law enforcement officials should "give a clear warning of their intent to use firearms … unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons". It therefore had no bearing on situations of self-defence. On that basis, he proposed that the words "including warnings" should be deleted from the fourth sentence. The relevance of footnote 47, which referred to paragraph 13.2 of the Committee's Views in the case of *Suarez de Guerrero v Colombia*, was also questionable, since it had involved a summary execution rather than self-defence on the part of law enforcement officials. Lastly, he felt that the reference to the protection of private property in the last sentence fell outside the scope of the "use of potentially lethal force for law enforcement purposes".

12. **Mr. Ben Achour** said that it was unclear whether the phrase in the fourth sentence concerning "the application of lethal force by a person acting in self-defence" referred solely to law enforcement officials, who were legally authorized to use force, or whether it also referred to private persons. He agreed with Mr. de Frouville that the wording of the third sentence of the French version should be aligned with the second sentence of paragraph 12 of general comment No. 35. As the Committee was working largely on the English version of the paragraph, it would be necessary at some point to go closely over the French version.

13. **Mr. Politi** said he concurred with Mr. de Frouville's observation concerning the logical contradiction between the first and third sentences.

14. **Mr. Heyns**, remarking that, according to the second sentence, an instance of the deprivation of life could be authorized by law and still be arbitrary, said that he assumed that the sentence referred to domestic rather than international law. He was in favour of the inclusion of a reference to self-defence, since States were obliged to protect the right to life and to adopt legal provisions regulating self-defence and protecting individuals from criminal activity.

15. **Mr. Shany**, noting that, as indicated by the foregoing speakers' comments, the first part of the paragraph was conceptual in nature, the second part dealt with self-defence by private individuals and the third part focused on the use of potential lethal force by law enforcement officials, said that he agreed with Mr. Heyns that States were obligated to create a framework that would strike a balance between the right to life of attackers and that of persons who were subject to an assault. He also agreed that footnote 46 should be deleted, since it referred to law enforcement rather than to self-defence.

16. There was a major overlap between arbitrariness and illegality, but the two should not be equated. Because some relatively minor forms of illegality might not constitute arbitrariness, the words "as a rule" had been included in the first sentence. The notion of arbitrariness was also far broader than that of illegality. He therefore proposed inserting the word "fully" before the words "equated with 'against the law'" in the first phrase of the third sentence.

17. In the interest of greater clarity and in line with the observations made by other Committee members, he proposed inserting the word "private" before "person" in the phrase "the application of potentially lethal force by a person acting in self-defence". He was also in favour of deleting the words "including warnings" from the fourth sentence and the references to private property and custody in the first part of the last sentence, which would then read "It cannot be used to prevent the escape of a suspected criminal or a convict ...".

18. With regard to paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, he proposed maintaining the second-to-last sentence as it stood and inserting a sentence at the end of the paragraph that would read: "The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat."

19. **Mr. Politi** proposed amending the second sentence to read: "A deprivation of life may, however, be authorized by domestic law and still be arbitrary."

20. **Mr. Ben Achour** proposed replacing "in order to protect private property" in the last sentence with "in order to protect public or private property". In his view, the paragraph was clear. Legal deprivation of life could nonetheless be arbitrary, as with the death penalty, for example. He could therefore not understand the objections to the first two sentences. There was no reason to change the way they were currently worded.

21. **Mr. Heyns** said that he agreed with Mr. Ben Achour. He proposed removing the word "however" from the second sentence of the paragraph, as it suggested that the second sentence, which should remain, contradicted the first.

22. **Mr. Shany** said that removing "however" could address a number of points. Unlike Mr. de Frouville, he was of the view that, as a rule, unlawful deprivation of life was arbitrary. Unlawfulness and arbitrariness were strongly correlated.

23. **Ms. Brands Kehris**, supported by **Mr. Ben Achour**, said that removing "however" would make the meaning of the first two sentences less clear. The second sentence was in fact in opposition to the first.

24. **Mr. de Frouville** said that the proposed changes had not addressed his concerns.

25. **Mr. Shany** said that, to sum up, if the Committee members agreed, he would add the word "private" before the word "person" in the fourth sentence of the paragraph, which concerned actions taken in self-defence, and would remove the words "including warnings" and footnote 46. The final sentence of the current version of the paragraph would become the last sentence but one and would be amended to remove the references to private property and custody. The sentence that had been proposed by Mr. Heyns based on paragraph 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which referred to the intentional lethal use of firearms, would then become the final sentence of the paragraph.

26. **The Chair** said that, if there were no further comments, she took it that the Committee members wished to adopt paragraph 18, subject to the amendments that had been discussed and the consideration of the French version requested by Mr. Ben Achour.

27. *Paragraph 18 was adopted on that understanding.*

28. **The Chair**, recalling that the Committee had adopted paragraphs 19, 20 and 21 at an earlier meeting, invited the members to resume their consideration of paragraph 22.

Paragraph 22

29. **Mr. Shany** said that paragraph 22 was an introduction to section III of the draft general comment, which concerned the duty to protect life by law. Since the Committee's previous discussion of the paragraph, it had undergone a number of changes. In the last sentence, for example, the word "reasonably" had been inserted before the words "foreseeable threats", while the second sentence had been amended to incorporate the following wording from article 2 (2) of the Covenant: "as may be necessary to give effect to the right to life". In its previous consideration of the paragraph, the Committee had not

decided whether to retain the word "legal" in the last sentence of the paragraph, which stated that States parties were required to take appropriate legal measures to protect life from all reasonably foreseeable threats. He was in favour of retaining it.

30. Following a discussion in which **Mr. de Frouville**, **Mr. Heyns**, **Mr. Ben Achour**, **Mr. Fathalla**, **Mr. Santos Pais**, **Mr. Politi**, **Ms. Brands Kehris** and **Mr. Shany** took part, the members agreed that the paragraph should reproduce the relevant wording of article 2 (2), i.e., "such laws or other measures as may be necessary …".

31. *Paragraph 22, as amended, was adopted.*

The meeting was suspended at 4.20 p.m. and resumed at 4.35 p.m.

Paragraph 23

32. **Mr. Shany** said that paragraph 23 expanded on the notion of the protection by law of the right to life. It stated that the circumstances in which a person could be deprived of his or her life by the authorities should be limited. They should also be strictly defined by law. The paragraph had not attracted many comments from States parties or other stakeholders. Two States parties had expressed unease with the words "full reparation", but the term was a part of the Committee's established lexicon. In a joint submission, a number of non-governmental organizations had raised an interesting question about the provision of reasoning for specific incidents in which lives were taken, and that point could be addressed when considering a later section of the draft general comment.

33. **The Chair** said that she took it that the Committee members wished to adopt paragraph 23 as it stood.

34. *Paragraph 23 was adopted.*

Paragraph 24

35. **Mr. Shany** said that paragraph 24 also dealt with the creation of a protective legal framework and had elicited relatively few comments. The Government of the Russian Federation had stated that it was a matter that should be left for national legislation and that not all the forms of deprivation of life listed in the paragraph were necessarily arbitrary. However, the purpose of the general comment was in part precisely to guide legislative developments, and he was not persuaded that the specific crimes that were listed were not of a nature that could lead to arbitrary deprivation of life. The United States, for its part, had expressed the view that the Covenant did not introduce wide-ranging positive obligations in terms of the duty to define specific criminal offences. That was not the position of the Committee, and that objection would be addressed in due course.

36. The Independent Expert on the enjoyment of human rights by persons with albinism had proposed that the Committee should add "witchcraft" to the list of criminal prohibitions, but that crime was very region-specific. The other phrase that the Independent Expert had advocated including, namely "ritual killings", seemed more appropriate. The National Consultative Commission on Human Rights of France had proposed alluding to "femicide" in the paragraph, but that issue was dealt with separately later in the text.

37. In a joint submission, a number of non-governmental organizations had advocated referring to the "unnecessary and disproportionate use of firearms", to which he did not object. Amnesty International had registered some uncertainty about whether the paragraph applied to individual actors or law enforcement officials. In his view, the word "individuals" was all-encompassing and deliberately ambiguous; it would not be desirable to suggest that only private individuals should be covered. Amnesty International had expressed concern about the possible war-related connotation of "disproportionate"; however, it would not be possible to dispense with that word without removing the entire reference to the "disproportionate use of firearms". In summary, he proposed adding the word "unnecessary" before "disproportionate" and adding the phrase "ritual killings" after "terrorist attacks".

38. **Mr. de Frouville**, supported by **Mr. Fathalla**, said that, although he had been in favour of including a reference to "femicide", he was satisfied that it was not necessary

given its inclusion in later paragraphs. He wondered whether specifying "death threats" in the list of crimes was necessary; threats were not on the same level as the other forms of arbitrary deprivations of life mentioned, such as homicide and lynching. In addition, he would be in favour of deleting the reference to "terrorist attacks" for a number of reasons: the Committee did not have a definition of terrorism, the phrase was so broad that it could refer both to acts by individuals and those attributable to a State, and terrorist attacks did not necessarily cause arbitrary deprivations of life. Likewise, the phrase "other manifestations of violence or incitement to violence that are likely to result in a deprivation of life" seemed to exceed the scope of the acts to which the Committee intended to refer.

39. **Ms. Brands Kehris** said that it would take some analysis to ensure that the list of acts to be prohibited was sufficiently inclusive and yet not too broad. While she understood the Rapporteur's reasons for opposing the inclusion of the word "witchcraft", she wished to point out that the term encompassed a very broad category of types of killing, including, in certain parts of the world, the killing of children thought to be possessed. The term "ritual killings" might not cover such acts.

40. **Mr. Santos Pais** said that there was an argument for keeping the reference to "death threats", which could lead to deprivation of life by, for example, inflicting great stress. He was also in favour of retaining the reference to "terrorist attacks".

41. **Mr. Shany** said that he believed many of Mr. de Frouville's concerns could be resolved by rearranging the first sentence so that it began, "States parties must enact a protective legal framework which includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in a deprivation of life, such as ..." and then proceeded to the list of examples.

42. The phrase "ritual killings" would convey the notion that certain culturally based crimes should be covered, and he supported its inclusion after "blood feuds". It was important to include "terrorist attacks" in the list, as it would not do for the world to draw the conclusion that the Committee did not concern itself with such acts. By using the word "individuals", the Committee had intentionally retained a measure of ambiguity as to the potential perpetrators of acts of terrorism and did not stray into the contentious area of prescribing any particular definition for States parties.

43. **Ms. Brands Kehris** said that the Committee must clarify whether the list of acts was exhaustive or instead enumerated the acts that were to be prohibited as a minimum. In the latter case, she would support the proposals. It was important to state explicitly that killings that might be deemed acceptable in certain cultural sub-contexts must be prohibited when they amounted to forms of arbitrary deprivation of life. In a recent case involving voluntary cannibalism, for instance, the State concerned had lacked a legal provision that would have enabled it to punish the perpetrator appropriately.

44. **Mr. Shany** said that the list was contextual rather than exhaustive and that he would be sure to include, after the reference to "ritual killing", a footnote referencing the report of the Independent Expert on the enjoyment of human rights by persons with albinism, which mentioned witchcraft.

45. *Paragraph 24, as amended, was adopted.*

Paragraph 25

46. **Mr. Shany**, noting the structural significance of paragraph 25, which laid out the positive obligation of States to protect life and introduced the concept of due diligence, said that few objections had been raised to the language it used. The Government of the United Kingdom of Great Britain and Northern Ireland had proposed changing "threats to life" to "reasonably foreseeable threats to life", which seemed to be a quite sensible addition. The Government of Norway had asked the Committee to clarify whether the final sentence of the paragraph referred to private lawful entities that had received delegated powers from the State, and that was indeed the case. The Government of the United States had contested the reference to a State's due diligence obligations vis-à-vis private parties, but the Committee's position had long been that the duty to ensure the rights set forth in the Covenant necessarily encompassed such a due diligence obligation. He did not propose that

the Committee should heed the proposals made by some experts and non-governmental organizations to reference the prohibition of light weapons, nor the suggestion by Amnesty International to delete "impossible or disproportionate burdens", which represented a hard-fought compromise phrase. Moreover, he did not see that it would be beneficial to introduce a notion of "foreign public officials". In short, the only change he advocated was the introduction of the word "reasonably" before "foreseeable".

47. **Mr. Heyns** said that he did not fully support the use of the word "impossible" in the phrase "impossible or disproportionate burdens"; it should be taken as understood that the Committee did not impose impossible burdens on States. The word "lawful" in the phrase "private lawful entities" seemed out of place and he would favour its deletion. As for current issues that States were called upon to address by means of positive measures, the Committee might usefully consider introducing a reference to the obligation of States to clear unexploded or abandoned landmines.

48. **Mr. Politi**, supported by **Ms. Brands Kehris**, said that he would support the deletion of the word "reasonable" from the phrase "undertake reasonable positive measures", as it somewhat diluted the proposition.

49. **Mr. Shany**, referring to Mr. Heyns' proposal to mention the clearing of landmines, said that he would not be in favour of introducing new obligations that States had not had time to review. He would not oppose the deletion of either "impossible" or "disproportionate" if the Committee was persuaded that one encompassed the other.

50. **Mr. Heyns** said that, as something that was impossible must also be disproportionate, "disproportionate" seemed to be the more appropriate adjective.

51. **Mr. Shany** said that there were fundamental differences between reasonableness and disproportionality. The former introduced the concepts of necessity and choice of means, whereas the latter alluded to a cost/benefit analysis. The phrase "impossible or disproportionate burdens" had been taken from a judgment by the Inter-American Court of Human Rights. Moreover, including a reference to reasonability might be helpful in allaying the concerns of some States that the Committee was being unreasonable in its interpretation of the Covenant.

52. **Mr. Politi** said that he would accept the retention of the word "reasonable" if the rest of the Committee supported it. However, members should be aware that, in so doing, the Committee was placing a rather limited and low-level list of obligations on States.

53. **Mr. de Frouville** said that "impossible or disproportionate" also reflected the phrasing used in an earlier judgment by the European Court of Human Rights. The notion of proportionality was important because the Committee could not expect a State to be everywhere at once.

54. **Mr. Shany** said that the word "reasonable" was in keeping with the Committee's usual requests for measures to be "appropriate" or "adequate". He took it that the Committee wished to delete "lawful" from the phrase "private lawful entities", remove the word "impossible", and introduce the word "reasonably" before "foreseen threats".

55. *Paragraph 25, as amended, was adopted.*

Paragraph 26

56. **Mr. Shany** said that the first issue addressed in the paragraph, namely the operation of external actors in a State's territory, had not prompted any controversy. The second issue raised, namely acts undertaken by the State itself and by corporate entities based in the State party, had elicited several comments. The Governments of the United Kingdom, Canada and Norway had indicated a preference to retain the word "direct", which was currently in square brackets, in the phrase, "having a direct, significant and foreseeable impact on the right to life of individuals".

57. The Government of Norway had suggested that including the notion of corporate social responsibility went beyond the scope of the Guiding Principles on Business and Human Rights, and the Russian Federation had commented that corporate social responsibility standards were not obligatory. However, the text merely implied that States

should take due account of relevant international legal standards. In a joint submission, a number of non-governmental organizations had suggested that a sentence should be added on States parties' obligation to carry out inquiries into the activities of other States on their territory. However, the issue was too specific for inclusion in the paragraph and, in any case, the question of inquiries was covered by the wording "appropriate measures".

58. Amnesty International had suggested amending the first sentence so that it covered not only States operating on the territory of other States, but also foreign third parties. That was a useful suggestion which could be accommodated by inserting "international organizations and foreign corporations" after "other States". It had also suggested deleting "direct" and "significant" from the phrase "having a [direct], significant and foreseeable impact" and replacing "areas subject to their jurisdiction" with "places subject to their jurisdiction". He proposed that the Committee should adopt the latter amendment, but was reluctant to delete both "direct" and "significant", as doing so would subject States to an excessive burden of responsibility.

59. The Russian Federation had suggested that the paragraph should address terrorist, extremist and organized crime groups. Since the second sentence covered States parties' obligations with regard to all activities under their jurisdiction, of which the activities of corporate entities was only one category, other types of activity were not excluded. The same responsibilities that applied to corporate entities would apply mutatis mutandis to other entities. Lastly, the United States had objected to the notion of a positive obligation to protect life from all foreseeable threats.

60. **Mr. de Frouville** said that, as it stood, paragraph 26 confused two distinct issues. The first related to whether the State party involved in a communication had jurisdiction over the individual invoking his or her rights. The second related to States parties' obligations in relation to the extraterritorial activities of corporate entities subject to their jurisdiction and their responsibilities in the event that those obligations were not met. The general comment should address the latter issue. In that regard, the Committee's conclusions in the case of *Basem Ahmed Issa Yassin et. al. v. Canada* were relevant and, since the general comment should reflect the Committee's most recent jurisprudence, those observations should figure in the paragraph. In that case, the Committee had concluded that States parties had an obligation to ensure that rights under the Covenant were not impaired by the extraterritorial activities of enterprises under their jurisdiction and that States parties had an obligation of reasonable due diligence over their extraterritorial activities when those activities affected individuals. In order to ensure that those conclusions were taken into account, he proposed redrafting the paragraph such that it read:

> *Les États doivent aussi veiller, en exerçant la diligence voulue et en prenant des mesures positives raisonnables, à ce que toute activité menée en dehors de son territoire par des organes, des personnes ou des entités qui relèvent de sa juridiction soit compatible avec l'article 6. À cet effet, les États ont l'obligation de mettre en place un cadre juridique offrant des moyens de recours aux victimes de ces activités.*
> [States must also ensure, by exercising due diligence and by taking reasonable positive measures, that all activities undertaken outside their territory by bodies, persons or entities subject to their jurisdiction are consistent with article 6. To that end, States parties have an obligation to establish a legal framework that makes remedies available to victims of those activities.]

61. **Mr. Heyns** said that it was important to introduce a degree of limitation on States parties' accountability in the paragraph; otherwise it might be unworkable and, as a result, have no effect at all. He therefore supported retaining the word "direct". Some States parties had argued that they could not be held accountable for violations of the right to life arising from aerial bombardments carried out in other States when those States had given their consent for such strikes to take place. He proposed introducing an additional sentence into the paragraph stating that States could not lawfully consent to or assist in acts on their territory that constituted unlawful deprivations of life.

62. **Mr. Politi** said that he agreed with the point raised by Mr. de Frouville and wished to state, for the record, that he was not in favour of retaining "direct". The text should not impose an obligation to determine whether an activity had had a direct or an indirect impact

on the right to life. Moreover, if States parties were required to take responsibility only for the demonstrably direct impact of their activities on the right to life, it would be too easy for them to shirk their responsibilities.

63. **Mr. Muhumuza** said that, like Mr. Politi, he did not support retaining "direct", which, if kept, would allow States parties to deny responsibility for their actions on the basis that their impact on the right to life was not direct in nature. He was unsure that the word "places" could be used to describe all areas within a State party's jurisdiction.

64. **Mr. de Frouville** said that he wished to clarify that he was proposing an alternative text because the paragraph no longer reflected the Committee's jurisprudence or the point that it really wished to get across, which was that States parties should ensure that the consequences of the lawful activities of a corporate entity subject to their jurisdiction were consistent with article 6, not simply the extraterritorial activities themselves, as the text seemed to suggest. If the Committee decided to maintain the current version of the paragraph, however, he would be in favour of deleting the word "significant" [*notable*], which was too vague and left too much room for interpretation. He was not in favour of retaining the word "direct".

65. **Mr. Ben Achour** said that it was unclear to him how the paragraph failed to address the concerns raised by Mr. de Frouville. The text made it clear that States parties should supervise all activity on their territory and in other areas subject to their jurisdiction, in other words, areas that were not in their territories but were nonetheless under their control by virtue of the fact that corporate entities subject to their jurisdiction had their operations there, as had been the case for Canada in *Basem Ahmed Issa Yassin et. al. v. Canada*.

66. **Mr. Heyns** said that he continued to support retaining "direct", because the question at hand was not simply whether there was a causal link between an activity and its impact on the right to life, but rather whether that impact was direct and foreseeable.

67. **Ms. Kran** said that she agreed with Mr. de Frouville in that the general comment should reflect the Committee's latest jurisprudence. The adjective "significant" should be deleted, because States parties should not be absolved of their responsibility for the consequences of activities that had only a partial impact on the right to life. Her preference was for a second phrase that would read "having a direct and reasonably foreseeable impact on the right to life".

68. **Mr. Shany** said that introducing an entirely new text in the final reading of the general comment would be contrary to the logical progression of the drafting process and would set a bad precedent. He therefore could not agree to redraft the entire paragraph in line with Mr. de Frouville's proposals. Moreover, contrary to Mr. de Frouville's view, he felt that the paragraph reflected the Committee's conclusions in the case of *Basem Ahmed Issa Yassin et. al. v. Canada*.

69. The second sentence was not intended to deal primarily with corporations under States parties' jurisdictions, but rather with extraterritorial obligations relating to the activities of States parties themselves. Many activities in one State party — coal mining, to take just one example — could have indirect consequences on others. However, to try to tackle such a broad topic within the scope of a general comment on article 6 would be overreaching. In attributing legal responsibility, it was logical to introduce elements of causal proximity, which the words "direct", "significant" and "foreseeable" did. He agreed with Ms. Kran's proposal to amend the sentence to read "direct and reasonably foreseeable".

70. **Mr. de Frouville** said that he agreed that new texts should not be introduced at such a late stage in the drafting process, other than in exceptional circumstances. That said, his proposal was a reformulation of the paragraph, rather than a completely new text. In the case of *Basem Ahmed Issa Yassin et. al. v. Canada*, the Palestinian land on which the Canadian corporations had conducted their operations had not been subject to Canadian jurisdiction. The central question had been whether the victims in the affair, not the land on which the Canadian corporate entities had their operations, fell under Canadian jurisdiction.

71. **Mr. Ben Achour** said that, if the term "areas subject to their jurisdiction" was understood to include the control exercised by a State party over a corporate entity in an

area outside its territory, then that area could be considered to be subject to the jurisdiction of the State party. Perhaps the term "areas subject to their jurisdiction" was unclear. He would welcome a proposal for a reformulation from Mr. de Frouville.

72. **Mr. Shany** said that he would take the Committee members' views into account and circulate a redrafted version of the paragraph at the subsequent meeting on the general comment.

The meeting rose at 6 p.m.